

1 DEMAS YAN
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5 Plaintiff in Pro Se

6 UNITED STATES BANKRUPTCY COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 OAKLAND DIVISION

9 In re: Tony Fu,

10 Debtor.

Bankruptcy Case No.: 17-41205 CN

AP # 17-04056

MOTION FOR NEW TRIAL OR
ALTERNATIVELY FOR AMENDMENT OF
JUDGMENT [Fed. R. Bankr. P. 9023]

11 Thai Ming Chiu, Demas Yan,
12 Plaintiffs,
13 v.
14 Tony Fu,
15 Defendant.

Date: 6/3/2019

Time: 10 am

Judge: Charles Novak

Ctrm: 215

Trial: January 8-9, 29-30, 2019

16 Plaintiff DEMAS YAN hereby motion for a new trial or alternatively for amendment of
17 judgment entered on March 28, 2019 and states as follows:

- 18 1. Rule 59 of F.R.Civ.P, make applicable by rule 9023 of Federal Rule of
19 Bankruptcy Procedure, provides in relevant part that the court may alter or
20 amend a judgment, or grant a new trial on all or some of the issues after a
21 nonjury trial, for any reason for which a rehearing has heretofore been
22 granted in a suit in equity in federal court. The court may open the judgment
23 if one has been entered, take additional testimony, amend findings of fact and
24 conclusions of law or make new ones, and direct the entry of a new judgment.
- 25 2. The Court entered the Judgment on Complaint (Doc.# 179) on 03/28/2019.
26 The Amended Memorandum Decision (Doc.# 177) was entered on
27 03/27/2019. The judgment was in favor of defendant Tony Fu and against
28 plaintiff Demas Yan on the claim under Bankruptcy Code § 523(a)(6).

- 1 3. At trial on January 30, 2019, the audio recording of Thomas Tucker's 911 call
2 (Ex. W) was played. In the recording, Mr. Tucker stated that as to the two
3 attackers that he saw, "I couldn't really tell their age." Yet the Court stated in
4 its Decision that Tucker, "who is a disinterested party – does not support
5 Yan's contention" that the attacker was Tony Fu, a middle-aged man, and that
6 Tucker "identified two teenagers as the attackers." The court's finding of fact
7 as to Tucker's statement is contrary to the evidence.
- 8 4. There now exists new material facts not available before trial that would
9 materially affect the outcome of trial. A new trial is justified based on these
10 new facts. These facts are confidential at the present time. Plaintiff will
11 present these facts to the court for purposes of this motion at the court's
12 instruction so as to avoid violating confidentiality.

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14 Dated: 4/10/2019
15 By: /s/DEMAS YAN
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